

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**MAR 17 1997**

**PATRICK FISHER**  
Clerk

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,  
v.

DANNA J. HELMS,

Defendant - Appellant.

No. 96-3168  
(D.C. No. 94-CR-10117-02)  
(District of Kansas)

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**ORDER AND JUDGMENT\***

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Before **TACHA, BALDOCK** and **LUCERO**, Circuit Judges.

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Defendant Danna Helms pleaded guilty to interstate transportation in aid of a racketeering enterprise. The sentencing guidelines yielded a range of imprisonment of 87 to 108 months. See II R., doc. 148 at 2-3. The maximum penalty established by statute, however, was 60 months. See 18 U.S.C. § 1952(a)(3)(A) The district court sentenced defendant below the statutory

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\*The case is unanimously ordered submitted without oral argument pursuant to Fed. R. App. P. 34(a) and 10th Cir. R. 34.1.9. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

maximum, to 54 months, because she was a minor participant in the offense, the offense was aberrant behavior for her and was caused by her desire to feed her drug addiction.

On appeal, defendant challenges the degree of the district court's downward departure from the sentencing guidelines. She argues that the district court should have relied on a combination of factors, including her low degree of culpability, her difficult childhood and psychological problems, to depart even further. It is well settled that, absent incorrect application of the guidelines, we lack jurisdiction to review defendant's challenge to the degree of downward departure from the sentencing guidelines. United States v. Bromberg, 933 F.2d 895, 896-97 (10th Cir. 1991); 18 U.S.C. § 3742(a).

Dismissed for lack of jurisdiction.

ENTERED FOR THE COURT

Carlos F. Lucero  
Circuit Judge